

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RONALD E. BELLAMY,

Plaintiff,

v.

ORDER  
08-CV-628

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

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This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1), on October 29, 2008. On March 23, 2009, defendant filed a motion for judgment on the pleadings and on May 27, 2009 plaintiff filed a motion for judgment on the pleadings. On March 30, 2010, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion should be denied, plaintiff's motion should be dismissed without prejudice and the matter should be remanded for an expedited new hearing and decision.

Defendant filed a limited objection to the Report and Recommendation on April 13, 2010 and plaintiff filed a reply thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the

proposed findings of the Report and Recommendation and finds that the matter should be remanded for further proceedings. However, the Court declines to adopt that portion of the Report and Recommendation requiring the hearing to be held within a specified time frame. Instead, in accordance with the government's request and the plaintiff's consent thereto, the Court orders that, upon remand, the case be consolidated with plaintiff's pending hearing on his August 23, 2008 application and that the matter be scheduled to be heard before the ALJ as soon as practicable.

For the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion is denied, plaintiff's motion is dismissed without prejudice and the matter remanded for consolidation and a hearing as soon as practicable. The Clerk of the Court is directed to take all steps necessary to close the case.

SO ORDERED.

*s/ Richard J. Arcara*

HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: May 20, 2010